

1 JOHN L. KRIEGER (Nevada Bar No. 6023)
2 jkrieger@lrlaw.com
3 LEWIS AND ROCA LLP
3993 Howard Hughes Parkway, Suite 600
4 Las Vegas, Nevada 89169
(702) 949-8200
(702) 949-8365 (fax)

5 ERIC SOMMERS (*Pro Hac Vice to be submitted*)
6 eric@sommerslaw.com
7 SOMMERS LAW, PLLC
600 State Street, Suite 1
8 Portsmouth, New Hampshire 03801
(603) 570-4854

9 *Attorneys for Herb Reed Enterprises, LLC*

10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12
13 HERB REED ENTERPRISES, LLC, a
Massachusetts company

14 Plaintiff,

15 v.

16 FLORIDA ENTERTAINMENT
MANAGEMENT, INC, a Nevada company; and
17 LARRY MARSHAK, an individual,

18 Defendants

CASE NO:

**DECLARATION OF FREDERICK J.
BALBONI, JR. IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

19 I, Frederick J. Balboni, Jr., declare under penalty of perjury pursuant to the laws of the
20 United States and the State of Nevada that the following is true:

21 1. I am President and Chief Executive Officer of the Balboni Communications Group,
22 LLC, P.O. Box 4183, Peabody, Massachusetts 01961.

23 2. I have extensive background and experience in the entertainment and music
24 business. I have been the manager for Herb Reed And The Platters (also known as "Herb Reed's
25 Platters") since 2005 and the only other manager Herb Reed has had aside from Buck Ram. At all
26 other times, Herb Reed managed his own career.

27 3. Herb Reed currently manages his business affairs through Herb Reed Enterprises,
28 LLC. I am the general manager for that company.

1 4. I am familiar with Herb Reed's career as a vocal performer and with the history of
2 The Platters. Much of that history is public record and has been repeated in many court decisions.

3 5. Herb Reed organized, founded and named the vocal group "The Platters" and has
4 been performing continuously under the name "The Platters" and "Herb Reed and The Platters,"
5 or combinations thereof, since 1953.

6 6. The group was initially composed of Joe Jefferson, Alex Hodge, Cornell Gunther
7 and Herb Reed. Jefferson and Gunther were replaced in 1954 by David Lynch and Tony Williams.
8 Reed, Lynch, Williams and Hodge recorded several songs as "The Platters" on the Federal
9 Records label.

10 7. In 1954, the group added Zola Taylor, and Paul Robi replaced Hodge. The group
11 comprised of those five performers, Robi, Lynch, Williams, Taylor and Reed, are sometimes
12 referred to as the "original" Platters.

13 8. The Platters enjoyed great success, charting several number one hits during the
14 1950's and 1960's. Through their recordings and original performances, Reed and the other
15 original members of the group made the group "The Platters" famous and of major importance to
16 the music industry. They were inducted into the Rock & Roll Hall of Fame in 1990, the Vocal
17 Group Hall of Fame in 1998, and the Grammy Hall of Fame in 1999 and 2002.

18 9. After the group was formed, it hired Buck Ram as its manager. Buck Ram's
19 secretary was Jean Bennett.

20 10. After becoming the manager for the Platters in 1954, Buck Ram formed a company
21 called Five Platters Inc. ("FPI"). He then tried to have all of the members of The Platters assign
22 their rights in their vocal group's name, "The Platters" to FPI (the "1956 Assignment").

23 11. In 1974, I understand that the Courts in California determined that Buck Ram's
24 creation of this company, and his attempt to have the members of "The Platters" assign the name
25 to FPI, was a sham and that no assignment was ever made. Despite this ruling, FPI and its owners
26 continued to claim that FPI had common law rights to the mark THE PLATTERS by virtue of the
27 1956 Assignment.

28

1 12. Over time, original members of “The Platters” left the group, and by 1969, Herb
2 Reed was the only original member left.

3 13. In 1969, Herb Reed discontinued his relationship with Buck Ram, Jean Bennett and
4 FPI. He continued to perform using THE PLATTERS mark, either by itself or in combination with
5 his name, such as “Herb Reed and The Platters” or various iterations thereof, and after 2001 as
6 “Herb Reed and The Platters” in order to conform with an injunction entered by the United States
7 District Court for the Eastern District of New York.

8 14. As members of the original Platters left, FPI, PPI and their owners commenced
9 litigation against original Platters, including Reed, to try and prevent them from using THE
10 PLATTERS mark in connection with their performances.

11 15. Larry Marshak was involved in litigation with FPI and PPI against Herb Reed in
12 the United States District Court for the Eastern District of New York. At the time of that litigation,
13 Marshak claimed to be a licensee of FPI and possibly PPI.

14 16. Litigation over THE PLATTERS mark, including litigation in which Larry
15 Marshak was involved, is extensive and well documented through court records, and summarized
16 in numerous opinions.

17 17. In 2003, Herb Reed registered the mark HERB REED AND THE PLATTERS with
18 the United States Patent and Trademark Office. In June of 2010, the mark received an
19 Acknowledgment of Incontestability. Copies of the Registration and Acknowledgment of
20 Incontestability obtained from the Patent and Trademark Office are attached as Exhibit A.

21 18. Herb Reed assigned the mark to Herb Reed Enterprises, Inc. Herb Reed
22 Enterprises, Inc. later assigned the mark to Herb Reed Enterprises, LLC. Copies of those
23 assignments obtained from the Patent and Trademark Office are attached as Exhibit B.

24 19. Herb Reed has now assigned all rights and goodwill in the marks THE PLATTERS
25 and HERB REED AND THE PLATTERS in Herb Reed Enterprises, LLC, the company through
26 which he currently manages his vocal group.

27 20. Larry Marshak promotes a vocal group using the mark THE PLATTERS only. He
28 currently has a show at the Crown Theater at the Rio Hotel and Casino in Las Vegas, in which he

1 promotes three groups together, calling his show "The Platters, The Cornell Gunther Coasters, and
2 The Marvelettes," which he advertises at www.platterslasvegas.com. Attached as Exhibit C is a
3 copy of their web site. It is my understanding that he runs this show using a company called
4 Florida Entertainment Management, Inc.

5 21. As can be seen by that web site, Marshak and his company promote their group
6 "The Platters" as being "a successful vocal group of the early rock and roll era." Their advertising
7 uses a photo of a vintage record jacket for the original group, which features Herb Reed as the
8 central figure. Nowhere does Marshak indicate that his group has no connection to the original
9 group who recorded the hit songs, were inducted into the Rock and Roll and Vocal Halls of fame,
10 and made the group and THE PLATTERS mark famous.

11 22. In addition, Marshak promotes his show using video clips of what appear to be live
12 shows, showing the group performing with a voice-over that states "the most legendary groups of
13 all time, live and in concert." Attached as Exhibit D is a copy of the video promotion.

14 23. "The Platters" were a famous vocal group who recorded numerous number one
15 hits. Their recordings are still sold and played on the radio, used in advertising and used in
16 numerous, and recent, movies, *e.g., Brooklyn's Finest, The Curious case of Benjamin Button,*
17 *Ocean's Twelve* among others (their recordings have been used in over 80 motion pictures and
18 television programs).

19 24. Purchasers of musical entertainment are mislead and confused by the presence of
20 phony groups billed as "The Platters" when those groups do not have legitimate rights to the mark,
21 and those groups are not associated with performers who first used the mark in commerce and
22 were responsible or participated in the performances and recordings that made THE PLATTERS
23 mark famous.

24 25. In order to avoid this type of false and misleading designation, numerous states,
25 including Nevada and New York (where Larry Marshak lives) have passed so-called "Truth in
26 Music" legislation that prevents misuse. The Truth in Music statute is followed by performers in
27 Las Vegas who list their groups as tributes and are careful to use a name for their show that clearly
28 distinguishes their live performances from those of the original recording artist. Attached as

1 Exhibit E is a copy of show listings showing that distinction. That printout also shows that
2 Marshak lists his group as a "headliner" along with other famous artists such as Celine Dion, Elton
3 John, and Rod Stewart.

4 26. Marshak's use of the mark THE PLATTERS, without clarifying that his group is a
5 tribute group so as to clearly distinguish that it is unrelated to the original group causes Herb Reed
6 Enterprises, LLC, who has superior rights to the mark, severe harm. Marshak's phony "Platters"
7 groups dilute the value of Reed's legacy as an entertainer and his' company right in the mark by
8 providing copycat vocal entertainment, thereby reducing demand and value of Reed's group, while
9 at the same time trading off of Reed's efforts and reputation as reflected in the mark.

10 27. In addition, the use of the mark THE PLATTERS in connection with other vocal
11 groups is confusingly similar to Reed's registered mark HERB REED AND THE PLATTERS.

12 28. If Marshak were to clarify that his copycat groups were "Larry Marshak's tribute"
13 or "Larry Marshak's salute" to "The Platters (as contemplated by Truth in Music laws) to make it
14 clear that they are distinct from the original "Platters" or groups that have original members, the
15 public would not be mislead into thinking that they were, or are connected to, the original
16 "Platters."

17 29. Marshak's wrongful claim of ownership of the mark THE PLATTERS is causing
18 further harm to Reed by impinging on its rights in the registered mark HERB REED AND THE
19 PLATTERS."

20 30. Herb Reed is the only living original member of the vocal group "The Platters."

21 31. Over nearly 60 years, Reed has spent either himself or though his companies,
22 considerable money and effort in creating and promoting THE PLATTERS and HERB REED
23 AND THE PLATTERS.

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1 32. Herb Reed is a significant performer and contributor to the history of Rock and
2 Roll. By virtue of his efforts and multiple musical and entertainment talents, Reed, along with the
3 members of the original "Platters," created the value, reputation and fame associated with the
4 marks THE PLATTERS and HERB REED AND THE PLATTERS."

5 Executed on this 4th day of April, 2012.

6
7 /s/ Frederick J. Balboni, Jr.

8 Frederick J. Balboni, Jr.
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